

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 Jamar Hunter,

5 Plaintiff,

6 v.

7 Officer Wood, et al.,

8 Defendants.
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Case No. 2:24-cv-00420-GMN-BNW

SCREENING ORDER

10 Pro se Plaintiff Jamar Hunter is currently incarcerated at the Clark County Detention
11 Center. Mr. Hunter submitted a civil rights complaint under 42 U.S.C. § 1983 (ECF No. 1-1) and
12 an application to proceed *in forma pauperis* (ECF No. 3).

13 **I. SCREENING STANDARD**

14 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
15 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims
16 and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be
17 granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
18 § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard
19 for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668
20 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient
21 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft*
22 *v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only
23 dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in support of
24 his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir.
25 2014) (*quoting Iqbal*, 556 U.S. at 678).

26 In considering whether the complaint is sufficient to state a claim, all allegations of
27 material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar*
28 *Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).

1 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
2 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.
3 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.* But
4 unless it is clear the complaint’s deficiencies could not be cured through amendment, a pro se
5 plaintiff should be given leave to amend the complaint with notice regarding the complaint’s
6 deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

7 **II. SCREENING ANALYSIS**

8 Mr. Hunter’s allegations stem from events that allegedly took place on November 30,
9 2023, at Casino Royale. He alleges that Officers Wood and Wolfanger detained, searched,
10 interrogated, and arrested him without his consent. He contends the manner in which they did so
11 was “deliberately indifferent” and that the force they used was “unmatched.” He also alleges that
12 these officers lied in their report and that he was prosecuted as a result. He explains he is
13 currently fighting these charges. He attributes this conduct to an underground policy that allows
14 for vindictive prosecutions.

15 Mr. Hunter names several defendants: Officer Wood, Officer Wolfanger, Clark County
16 Commissioners, Sheriff McMahon, and METRO. While he lists several amendments, it appears
17 he intends to assert claims for “vindictive prosecution,” “excessive force,” and “deliberate
18 indifference.”¹ Mr. Hunter seeks damages of \$250,000 against each Defendant.

19 **A. Excessive Force**

20 A claim of excessive force during an arrest is analyzed under the Fourth Amendment’s
21 “objective reasonableness” standard. *Graham v. Connor*, 490 U.S. 386, 395–97 (1989). Whether
22 the use of force by a law enforcement officer was objectively reasonable must be assessed “in
23 light of the facts and circumstances confronting [the officer], without regard to their underlying
24 intent or motivation.” *Id.* at 397. “Determining whether the force used to effect a particular
25 seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and
26 quality of the intrusion of the individual’s Fourth Amendment interests against the countervailing

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28 ¹ His complaint identifies these three claims, but he lists each of these as violations of the 6th, 8th, 14th,
5th, and 4th Amendments.

1 governmental interests at stake.” *Id.* at 396 (quotations omitted). In this analysis, the court must
2 consider the following factors: (1) the severity of the crime at issue, (2) whether the plaintiff
3 posed an immediate threat to the safety of the officers or others, and (3) whether the plaintiff
4 actively resisted arrest. *Id.*; *see also Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912,
5 921 (9th Cir. 2001). While the *Graham* factors are guidelines, “there are no per se rules in the
6 Fourth Amendment excessive force context” and the court may examine the totality of the
7 circumstances. *Mattos v. Agarano*, 661 F.3d 433, 441 (9th Cir. 2011) (en banc).

8 Here, while Plaintiff intends to assert a claim for “excessive force,” he provides no facts in
9 support of that claim other than to say that the use of force was “unmatched.” He does not explain
10 the facts and circumstances surrounding the detention and/or arrest (such as, for example, whether
11 he posed a threat to the officers’ safety or otherwise resisted the arrest). As a result, the Court will
12 dismiss the claim with leave to amend.

13 **B. Vindictive Prosecution**

14 There are two ways to establish vindictive prosecution. First, a defendant “may establish a
15 vindictive prosecution claim ‘by producing direct evidence of the prosecutor’s punitive
16 motivation,’ [but] such evidence is not necessary.” *United States v. Brown*, 875 F.3d 1235, 1240
17 (9th Cir. 2017) (citation omitted). Second, a defendant may create a rebuttable presumption of
18 vindictiveness “by showing that the circumstances establish ‘a reasonable likelihood of
19 vindictiveness.’” *United States v. Kent*, 649 F.3d 906, 912–13 (9th Cir. 2011). “[T]he appearance
20 of vindictiveness results only where, as a practical matter, there is a realistic or reasonable
21 likelihood of prosecutorial conduct that would not have occurred but for hostility or a punitive
22 animus towards the defendant because he has exercised his specific legal rights.” *United States v.*
23 *Gallegos-Curiel*, 681 F.2d 1164, 1169 (9th Cir. 1982).

24 Plaintiff’s complaint does not allege facts suggesting that charges were filed against him
25 based on his exercise of specific legal rights. Thus, the Court will dismiss this claim. It appears
26 Plaintiff is alleging vindictiveness, but not in the legal sense. Instead, Plaintiff appears to allege
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1 that Officers Wood and Wolfanger were vindictive in providing false information, which resulted
2 in charges being filed. Nevertheless, the Court will allow leave to amend.²

3 **C. Deliberate Indifference**

4 A constitutional claim based on deliberate indifference is typically connected to the failure
5 to address an inmate's medical needs while on pretrial release or while serving a sentence.
6 Depending on the inmate's custody status, such failure can give rise to a Fourteenth Amendment
7 claim or an Eighth Amendment claim. *Castro v. County of Los Angeles*, 833 F.3d 1060, 1067–68
8 (9th Cir. 2016); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

9 Plaintiff alleges no facts that relate to the failure to treat his medical needs. Once again,
10 his use of the term “deliberate indifference” does not appear to be intended in the legal sense.
11 Instead, he appears to claim that Officers Wood and Wolfanger were deliberately indifferent in
12 falsifying information. As a result, the Court will dismiss this claim. While it does not appear that
13 Plaintiff intends to file such a claim, the Court will allow him leave to amend.

14 **D. Instructions for Amendment**

15 As mentioned above, Plaintiff is given leave to amend his complaint. The Court provides
16 the following remarks in order to guide any such amended complaint.

17 Plaintiff is instructed to read the order carefully before amending his complaint. Each
18 claim must allege facts showing how each named defendant is involved. Although the Federal
19 Rules of Civil Procedure adopt a flexible pleading policy, Plaintiff still must give defendants fair
20 notice of each of the claims he is alleging against each defendant.

21 Plaintiff is further advised that if he files an amended complaint, the original complaint
22 (ECF No. 1-1) will no longer serve any function in this case. The court cannot refer to a prior
23 pleading or to other documents to make his second amended complaint complete. The amended
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25 ² The Court notes that it is unclear whether vindictive prosecution is a cognizable cause of action under
26 § 1983. *See Willis v. Rochester Police Dep't*, No. 15-cv-06284-FPG, 2018 WL 4637378, at *7 n.12
27 (W.D.N.Y. Sept. 27, 2018). While some courts “faced with such § 1983 claims have . . . recognized it as a
28 valid cause of action,” other courts have found that “[a]t best, [a vindictive prosecution] claim may be
analogized instead to a malicious prosecution claim.” *Id.* At this stage, given it is not clear what Plaintiff
intends to allege, the Court will not make this determination.

1 complaint must be complete in and of itself without reference to prior pleadings or to other
2 documents.

3 **III. CONCLUSION**

4 IT IS ORDERED that Plaintiff's application to proceed in forma pauperis (ECF No. 3) is
5 GRANTED. Plaintiff is permitted to maintain this action to conclusion without prepaying fees or
6 costs or giving security for them.

7 IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915, as amended by the
8 Prisoner Litigation Reform Act, the Clark County Detention Center shall pay to the Clerk of the
9 United States District Court, District of Nevada, 20% of the preceding month's deposits to the
10 account of Jamar Hunter (in months that the account exceeds \$10.00) until the full \$350 filing fee
11 has been paid for this action. The Clerk shall send a copy of this order to the attention of Frank
12 Doyle at 330 S. Casino Center Boulevard, Las Vegas, NV 89101.

13 IT IS FURTHER ORDERED that, even if this action is dismissed, or is otherwise
14 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. § 1915, as amended by the
15 Prisoner Litigation Reform Act.

16 IT IS FURTHER ORDERED that the Clerk of Court must detach and file Plaintiff's
17 complaint (ECF No. 1-1) and send Plaintiff a courtesy copy.

18 IT IS FURTHER ORDERED that the excessive force claim is dismissed with leave to
19 amend.

20 IT IS FURTHER ORDERED that the vindictive prosecution claim is dismissed with leave
21 to amend.

22 IT IS FURTHER ORDERED that the deliberate difference claim is dismissed with leave
23 to amend.

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1 IT IS FURTHER ORDERED that if Plaintiff chooses to file an amended complaint, he
2 must do so by March 6, 2025. Failure to file an amended complaint in accordance with this order
3 will result in a recommendation that this case be dismissed.

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5 DATED this 30th day of January 2025.

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7 BREND A WEKSLER
8 UNITED STATES MAGISTRATE JUDGE
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